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FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act (FOIA); Miscellaneous Rules

Redelegation of Authority to Determine Appeals under the FOIA

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is revising its rules to authorize the General Counsel to redelegate his or her authority to determine appeals related to the Freedom of Information Act (“FOIA”). The Commission is adopting these changes in order to improve and expedite the process for responding to such appeals. The changes will affect internal procedures only and are not intended to influence the outcomes of appeals made under the rules. The Commission is also adding a new provision that explicitly provides the right to appeal fee waiver determinations under the FOIA.

DATES: These amendments are effective [insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: W. Ashley Gum, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, 202-326-3006.

SUPPLEMENTARY INFORMATION:

Under the Commission’s current rule governing FOIA appeals (16 CFR 4.11(a)), appeals from initial denials of requests for extensions, and initial denials of requests for

information under the FOIA, are addressed to the General Counsel. 16 CFR 4.11(a)(3)(i)(A)(4). Reorganization Plan No. 4 of 1961, 75 Stat. 837, authorizes the Commission to delegate any of its functions. It imposes no restrictions on the Commission's capacity to authorize a Commission official to designate others to carry out delegated functions (i.e., to redelegate). The Commission notes that generally FOIA appeals are time-consuming because they cannot be decided generically. Each appeal can involve numerous documents that must be analyzed individually on the basis of the standards provided in the FOIA. The Commission believes that this redelegation authority would be in the public interest because it would enable the administrative review process to be carried out more expeditiously. The Commission is therefore revising paragraph (a)(3)(iii)(B) of the rule to authorize the General Counsel to redelegate any FOIA appeal function to a Deputy General Counsel because it is primarily a legal review to assure compliance with existing law and to assure implementation of existing Commission policy. Decisions of a Deputy General Counsel on appeal shall constitute final agency action. In unusual or difficult cases, such as those that present novel policy issues, the General Counsel, in his/her discretion, may make the determination himself or refer an appeal to the Commission for determination.

As noted above, the Commission is also adding a new Rule 4.11(a)(3)(i)(A)(3), which is currently reserved in the CFR, to provide FOIA requesters with the explicit right to appeal fee waiver and reduction determinations and to include a clear deadline for filing such appeals.

The Commission believes that the proposed rule amendments do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the

amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not “small entities” within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Moreover, these proposed rule amendments are matters of agency practice and procedure that are exempt from notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), which also exempts the proposed amendments from the analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Likewise, the amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The Commission nonetheless solicited comments regarding the new Rule 4.11(a)(3)(i)(A)(3),¹ but that proposed addition did not elicit any comments.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for Part 4 continues to read as follows:

AUTHORITY: 15 U.S.C. 46, unless otherwise noted.

2. Amend §4.11 by adding paragraph (a)(3)(i)(A)(3) and revising paragraph (a)(3)(iii)(B), to read as follows:

§4.11. Disclosure requests.

(a) * * *

¹ *See* 78 FR 13570, 13573 (Feb. 28, 2013).

(3) * * *

(i) * * *

(A) * * *

(3) If an initial request for a fee waiver or reduction is denied, the requester may, within 30 days of the date of the letter notifying the requester of that decision, appeal such denial to the General Counsel. In unusual circumstances, the time to appeal may be extended by the General Counsel or his or her designee.

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(iii) * * *

(B) The General Counsel may designate a Deputy General Counsel to make any determination assigned to the General Counsel by paragraph (a) of this section. The General Counsel or the official designated by the General Counsel to make the determination shall be deemed solely responsible for the denial of all appeals, except where an appeal is denied by the Commission. In such instances, the Commission shall be deemed solely responsible for the denial.

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By direction of the Commission.

Donald S. Clark,
Secretary.